

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, SEPTEMBER 24, 2004
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:07 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Ms. Kathryn Inouye
Mr. Gerald DeMello

Mr. Timothy Johns
Mr. Ted Yamamura
Mr. Ron Agor

STAFF

Ms. Dede Mamiya, Land
Mr. Mike Constantinides, DOFAW

Mr. Paul Conry, DOFAW
Mr. Sam Lemmo, OCCL

OTHERS

Mr. Vince Kanemoto, Deputy Attorney General
Mr. Larry Sumida, D-14
Mr. Dale Suzuki, D-11
Ms. Barbara Bell, D-6
Ms. Lynn Maunakea, D-7
Mr. Ralph Kiessling, D-8
Mr. Lloyd Jones, C-1
Ms. Lena Soliven, D-15

Mr. Micah Kane, D-14
Mr. Douglas Halbert, D-9
Mr. Ted Middleton, D-16
Mr. John Howell, D-12
Mr. William Fernandes, D-4
Ms. Sheree Steward, K-2
Ms. D-15

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of September 10, 2004

The Board made the following changes:

Page one, "Others" section, last line and page 10, fourth paragraph

Ms. Kat [~~Brody~~] Brady"

Page 6, Item K-7, third paragraph, second sentence

"Mr. Chandler assured the board he has workeded very hard to fulfill the conditions . . ."

Page 7, Item D-13, line 7

"1) Where there is a County or State beach park, set aside the beach from the high water mark to the low [~~low~~] water mark . . . 3) [~~Create~~] Create a new division or office within the Department;"

Page 9, first paragraph letter "C", third line

" . . . conservation District Use Application (CDUA [~~0~~]) with the DLNR for continued [~~sue~~] use of the seawall"

Page 11, Item D-2:

Item D-2: Set aside to the Department of Human Services for Health and Human Services, Piihonua, Hawaii, TMK: (3) 2-3-15:56.

Unanimously approved as amended (Johns/Inouye).

Item D-14: Conveyance of State Owned Land to the Department of Hawaiian Home Lands Located at East Kapolei, Honouliuli, Ewa, Oahu, TMK: 9-1-17:71 and 88.

Dede Mamiya, Administrator of the Land Division informed the Board the conveyance of the State owned land will include 404 acres less 56 acres for set aside to the Department of Transportation (DOT) and less 30 acres for future set aside to the Department of Education (DOE) for an elementary school site and a middle school. Thereby leaving 318 for the conveyance to the Department of Hawaiian Home Lands (DHHL). The subject lands were acquired through condemnation of lands owned by Campbell Estate which restricts the use of the lands to agriculture, housing, public facilities, State or municipal golf courses and neighborhood convenience commercial. Ms. Mamiya mentioned that the Abutilon Meniesii plant is scattered along the subject site and currently the Division of Forestry and Wildlife has established a Habitat Conservation Plan to protect this plant. Lastly she told the Board the Department would also be conveying the OSCS pesticide mixing plant to the Department of

Hawaiian Home Lands. In closing Ms. Mamiya recommended the Board authorize the conveyance of the subject 318 acres at East Kapolei and authorize the application of the subject 318 acres as an acre for acre reduction of the 1,170 acres remaining to be conveyed to DHHL in satisfaction of a Settlement Agreement between DLNR and DHHL.

Micah Kane and Larry Sumida representing the Department of Hawaiian Home Lands were present. Mr. Kane thanked staff and the Department of Transportation for all the work they've done in preparing this submittal.

The Board amended the Recommendation to add the following.

“1.h. Access rights along the boundary between the subject property and the properties comprising the North South Road will be reserved to the State Department of Transportation provided that the subject properties one access to the North South Road will be permitted at a location agreed to by DOT and DHHL.”

Unanimously approved as amended (Johns/Inouye).

Item D-11: Rescind Prior Board Action of July 24, 1998 (Agenda Item D-13); Set Aside to Department of Transportation, Highways Division for Highway Purposes and Issuance of a Construction Right-of-Entry; Cancellation of Revocable Permit Nos. S-7329 and S-7152; and Issuance of New Revocable Permits to A.M. Enterprises, LLC and Aloun Farm, Inc., Honouliuli, Ewa, Oahu.

Ms. Mamiya reminded the Board they previously granted approval of this item but because some changes needed to be made she would like to rescind the prior approval. The changes made to the submittal include changes to the ownership and the area. Ms. Mamiya recommended the Board rescind the prior Board action of July 24, 1998 under agenda item D-13, authorized the issuance of a construction right-of-entry to the Department of Transportation, Highways Division and their contractors covering the subject area and authorize the Cancellation of Revocable Permit Nos. S-7329 and S-7152 and the re-issuance of revocable Permits to A.M. Enterprises, LLC and Aloun Farm, Inc for agriculture purposes.

Dale Suzuki representing the Department of Transportation was present.

Unanimously approved as submitted (Inouye/Johns).

Item D-9: Set Aside to County of Maui for a Veterans Center and Community Support Activities, Kihei, Wailuku, Maui, TMK: (2) 3-9-07:03.

Ms. Mamiya made it known the Veterans of Foreign Wars has occupied the subject premises since December 1972 Under a Revocable Permit. Throughout the years the Veterans has cleared the land, planted grass and maintained the area. At present the County of Maui plans to gain control over the subject property and negotiate a long-term lease with the Veterans of

Foreign Wars to utilize this facility. Ms. Mamiya is recommended the Board approve of and recommend to the Governor the issuance of an Executive order setting aside the subject lands to the County of Maui under the terms and conditions listed in staff's submittal.

Douglas Halbert representing the Veterans of Foreign Wars noted his support of staff's recommendation.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-6: Cancellation of Governor's Executive Order No. 3975, 2432 and 284; Set Aside to County of Hawaii for Solid Waste Landfill, Transfer Station, Disposal, Recycling and Related Purposes; Set Aside to County of Hawaii for Road and Utility Purposes, Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-1-13: 11, 142, 150, 152, 156, 162, 167, 168 and portions of Road Right-of-Ways.

Ms. Mamiya conveyed to the Board that staff is requesting to cancel three Governor's Executive Orders and together with other sites set aside the lands to the County of Hawaii for a Solid Waste Landfill. The current estimate of the existing South Hilo Sanitary Landfill's capacity predicts that it will reach its capacity and be closed within the next year or so. AS a result, the county has completed an EIS and has plans for a major recycling facility. She also made it known a revocable permit has been issued for one of the subject parcels to Kiyosaki Tractor Wroks, Inc for their base yard facilities. Ms. Mama is recommendind that the Executive Order be subject to the existing conditions of revocable permit No. 6977 until the County notifies the lessee they require use of the area for their purposes. Another revocable permit has also been issued to the Department of Transportation, Airports Division for the purpose of an access easement and again staff is requesting that the Executive Order to the County be subject to this revocable permit easement and a possible long-term easement to Kamehameha Schools and their quarry licensees. Ms. Mamiya recommended the Board approve of and recommend to the Governor the Issuance of an executive order canceling Governor Executive Order No. 3975, 3432 and 2841, approve of and recommend to the Governor the issuance of an executive order setting aside the same areas in addition to the TMK's listed in staff's submittal and authorize a construction right-of-entry to the County of Hawaii for the entire area to be set aside subject tot the conditions listed in the submittal.

Barbara Bell of the County of Hawaii, Department of Environmental Management was present.

The Board amended:

- 1) The Purpose Section by adding the purpose of a second executive order to "road and utility purposes."**
- 2) The Recommendation Section by amending paragraph 2 to read as follows:**

“2. Approve of and recommend to the Governor the issuance of [an] two executive orders setting aside the same areas in addition. . .”

Unanimously approved as amended (DeMello/Johns).

Item D-16: Resolution of Certain Improvements Constructed on State Land at the Hilton Waikoloa Village, Anaehoomalu, South Kohala, Hawaii, TMK: (3) 6-9-07:14.

Chairperson Young recused himself.

Ms. Mamiya recommended the Board defer this item as the documents were not available with sufficient time for the public to make comment on it.

Ted Middleton, Senior Vice President of Hilton Hotels Corporation spoke of the history of his company's acquisition of their interest in the hotel. May 2002 Hilton became the majority owner of the hotel. He clarified it is the interest of Hilton Hotels to remain proactive in trying to accomplish a long-term solution to the ceded lands issue. In the past, Mr. Middleton has met with interested parties in hopes of understanding their views and arriving at some type of resolution. MR. Middleton noted that currently they have entered into a revocable permit with the State regarding the subject parcel.

Motion to Defer

Unanimously approved to Defer (DeMello/Yamamura).

Item D-7: Amendment of General Lease No. S-5108, City & County of Honolulu, Lessee, Honolulu, Oahu, TMK: (1) 1-5-09:01.

Ms. Mamiya informed the Board the current lease to the City and County of Honolulu is being utilized as a community facility for the urban homeless “street people” and is run by the Institute for Human Services. After review of the lease documents Ms. Mamiya noted that the Board intended for the rent to remain nominal therefore she is recommending the Board delete the phrase “Rent shall be reopened and determined at the end of the 20th, 30th, 40th and 50 years of the lease.”

Lynn Maunakea was present for this item.

Unanimously approved as submitted (Inouye/Johns).

Item D-12: Set Aside to Department of Human Services for Health and Human Services, Honolulu, Oahu, TMK: (1) 2-1-39:19.

Ms. Mamiya pointed out this lease is one of several non-profit leases with outstanding reopening due to the board discussion regarding leasing to non-profits including the amount of rent each should pay. Currently the Department of Human Services is requesting a set

aside of the lands so they will be able to manage the lease and determine the lease rent of \$1.00 per year. Ms. Mamiya recommended the Board approve of and recommend to the Governor the issuance of an Executive Order setting aside the subject lands to the Department of Human Services and authorize the amendment of General Lease No S-4560 as listed in staff's submittal.

John Howell was present for this item.

Unanimously approved as submitted (Inouye/Yamamura).

Item D-8: Grant of 55-year Non-Exclusive Easement for Concrete Boat Ramp to Ralph and Margaret Kiessling, Kalokohanahou, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-47:49 seaward.

Ms. Mamiya made it known the applicants who are participating in the Kaneohe Piers Amnesty Program are seeking a non-exclusive easement for a concrete boat ramp. The boat ramp has encroached approximately 180 feet onto State lands. The Office of Conservation and Coastal Lands Staff has determined the issuance of an easement would have no adverse impacts on natural resources. Ms. Mamiya recommended the Board impose a \$500 fine for the illegal encroachment and authorize the issuance of a 55-year term, non-exclusive easement to the applicants covering the subject area.

Ralph Kiessling the applicant was present to answer any questions.

Unanimously approved as submitted (Inouye/Johns).

Item D-4: Forfeiture of General Lease No. S-3674, William Kimo Fernandes, Lessee, Wailua, Kawaihau (Puna), Kauai, Hawaii, TMK: (4) 3-9-02:21.

Ms. Mamiya conveyed to the Board the lessee was served a Notice of Default for failure to keep his rental payments current. The cure period of August 29, 2004 has since expired. Currently Mr. Fernandes owes \$4250.00 (which includes late payment fees), of that amount \$1200.00 is in default. Ms. Mamiya recommended the Board authorize the cancellation of General Lease No. S-3674, authorize the retention of all sums theretofore paid or pledged under General Lease No. S-3674, terminate the lease and all rights of the lessee and all obligations of the lessor effective as of 9/24/04 and authorize the Department of the Attorney General, the Department of Land & Natural Resources or their agents to collect all monies due the State of Hawaii under General Lease S-3674.

William Kimo Fernandes testified that his lease has increased over 600%. He spoke of the limited canoe use he has (he is only able to use four and six men canoes). He notes his customers prefer using two man kayaks. Due to this problem he has had to turn away a lot of business. He made it known his family has invested over \$200,00 into this business and would like to see their operation continue. Mr. Fernandes spoke of using kayaks that have a more Hawaiian design and look but the Department eventually instructed him that he was not allowed to use these kayaks (2 men). He went on to tell the Board at the time staff came out

to re-appraise his rent he was using the two men kayak and he believes the increase in the rent was based upon this issue.

When asked by the Board how long it would take him to become current with the lease rent, Mr. Fernandes replied six months.

The Board asked for clarification of “Allied Uses” as stated on the 2/25/00 board submittal listed under agenda item D-1. The Board wanted to make sure staff was in compliance with the terms of the lease.

The Board deferred this item to later in the meeting to give staff time to research the “Allied Uses” of the subject lease.

Item C-1: Approval to go out to Public Hearings to Amend Hawaii Administrative Rules Chapter 104, § 13-104-22 commercial harvest permits, to increase permit value, period of validity, and frequency.

Paul Conry, Administrator of the Division of Forestry and Wildlife and Michael Constantinides, Forestry Program Manager appeared before the Board to go over staff’s submittal. Mr. Conry communicated the commercial harvest permit provides the Division the flexibility and capability to effectively administer small-scale commercial timber sales, salvage dead or dying timber resources and recover value from trees that threaten fences, roads and buildings and trees that can be removed in pursuit of other management goals. The current rule limits any given person, group, organization or association three permits annually each not to exceed \$1,000 and each valid for no more than 14 days. The reason the division is seeking to amend the current rule is because it is restrictive in relation to the Division’s capability to effectively salvage native timber resources from forest reserves. The proposed rule would allow up to six permits annually, each not to exceed \$10,000 per permit, and each valid for no more than 14 or 30 days, for permit values setup to \$1,000 or \$1001 - \$10,000 respectively. Mr. Conry recommended the Board approve for the Division of Forestry and Wildlife to go out to public hearings to amend Hawaii Administrative Rules Chapter 104, §13-104-22 commercial harvest permits to increase the permit value, period of validity and frequency as detailed in the submittal.

Mr. Constantinides make it known the current rule would apply to both agriculture and conservation zoned forest reserve lands. Also the current rule does not require a conservation district use application or permit for this activity.

Unanimously approved as submitted (Johns/DeMello).

Item K-2: Contested Case HA-05-01 Waive Written and Oral Request for Contested Case Hearing, and Appoint and select a Hearing Officer to Conduct All Hearings for a Contested Case.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands conveyed the Petitioner in case No. HA-05-01 is asking the Board for a contested case hearing.

Approximately two weeks after the August 27, 2004, Land Board meeting staff received a letter from the attorney of the alleged requesting a contested case hearing. Because an oral request was not made upon the completion of the August 27, 2004 meeting, Mr. Lemmo is asking the Board to waive this issue as it has that option. Mr. Lemmo recommended the Board waive the petitioner's failure to make an oral request and the lack of written request for a contested case hearing by the close of the board meeting at which the matter was scheduled for disposition, authorize the appointment of a Hearing Officer for CC HA-05-01 and that the Board delegate the authority for selection of the Hearing Officer to the Chairperson.

The Board question as to why the request for a contested case hearing was turned I by the petitioners' attorney after the deadline.

Sheree Stewart of Cades Schutte representing the petitioners told the Board it was her understanding that Mr. Kamai was not accurately informed of his right to a contested case hearing. She made it known they were four days late in turning in their request but she assured the Board as soon as they received the case they worked diligently in processing the necessary paperwork. Ms. Stewart made it known if the Board decides to deny this request before them, they have filed an appeal to the circuit court to appeal the Board's decision.

The Board amended staff's recommendation as follows:

- 1) That the Board [~~waive~~] deny the petitioner's failure to make an oral request and the lack or written request for a contested case hearing by the close of the Board meeting at which the matter was scheduled for disposition;**
- 2) That the Board [~~authorize~~] deny the appointment of a hearing office for CC HA-05-01 and let the Hearing Officer conduct all the hearings relevant to the subject petition for a Contested Case Hearing, and**
- [3] — ~~That the Board delegate the authority for selection of the Hearing Officer to the Chairperson.~~**

Unanimously approved as amended (DeMello/Johns).

Item K-1: Enforcement File HA-02-24 Regarding Alleged Unauthorized Construction of Two (2) House Structures, and Removal of Hala Trees, Carl C. Green, P.O. Box 1152, Pahoa, Hawaii 96778, Subject parcel TMK: (3) 1-4-028:036, Waa Waa Subdivision, Puna District, Hawaii.

Motion to Defer

Unanimously approved to defer (DeMello/Johns).

Item M-1: Issuance of Lease – Airport Surveillance Radar-11 and Moving Target Indicator (MTI) Federal Aviation Administration United States of America (USA), Kahului Airport.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-4: Forfeiture of General Lease No. S-3674, William Kimo Fernandes, Lessee, Wailua, Kawaihau (Puna), Kauai, Hawaii, TMK: (4) 3-9-02:21.

(continued from earlier in the meeting)

Ms. Mamiya informed the Board this lease was auctioned and the specific character of use states for "Hawaiian Museum and allied uses." Because this lease was auctioned the Board cannot go ahead on their own and change the use of the lease. Ms. Mamiya also pointed out under "allied uses" it states that the kayaks used by the lessee are not considered "allied uses" were as traditional outrigger Hawaiian canoes (4-man or 6-man) are allowed under the terms of the lease.

The Board gave the Lessee 30 days to pay the delinquent rent (\$1200) otherwise the lease shall be automatically terminated.

Unanimously approved as amended (Agor/Johns).

Item D-15: Resubmittal: Rescind Prior Board Action of January 11, 2002, Agenda Item D-34, for the Cancellation of Revocable Permit No. S-7245 to Lena P. Soliven and Troy Wallace, and Issuance of Revocable Permit to Lena Soliven, Kahana Valley State Park, Oahu, TMK: 5-2-02:por. of 01.

Ms. Mamiya reminded the Board previously they approved a cancellation of six revocable permits and the issuance of five new permits. One of these permits being Revocable Permit S-7245, which was in default for failure to post the required liability insurance. Since that time Lena Soliven has posted the required liability insurance. Ms. Mamiya informed the Board Ms. Soliven has paid all late rental payments and she is also requesting that the Board waive the late fees as she believes the applicants have contacted staff in the past to resolve the rent issue but for some reason staff did not react. At present the rent is current.

Ms. Ululani Berirne, mother of Troy Wallace came forward to testify. She told the Board if they rescind their prior board action it would affect two households – Lena Soliven and her son Troy Wallace who both occupy separate homes on the subject parcel. She made it known her family has occupied and taken care of the land for the past sixty years. She noted State Parks does not have the necessary manpower to manage the land. She feels it is not fair to remove one member of her family while the other is allowed to remain on the subject parcel. In closing she asked the Board to allow her son, Troy Wallace to remain on the parcel.

Lena Soliven one of the permittees of Revocable Permit S-7245 informed the Board she has been to the Fiscal Office six times within the last two years to resolve the issue of delinquent payments.

The Board denied staff recommendations. The Board waived all late fees and directed staff to record the explanation for the waiver in Lena's file.

Unanimously approved as submitted (Inouye/Johns).

Item D-5: Confirming that the Department of Transportation Shall Record its Land Conveyance Document at the Bureau of Conveyances Pursuant to Section 171-24, HRS.

Motion to Withdraw

Unanimously approved to withdraw (Johns/Inouye).

Item D-1: Issuance of Land Patent in Confirmation of Land Commission Award No. 6643 to Nahaka situate at Nania, Waimea, District of Kona, Kauai, TMK: (4) 1-5-02:26.

Item D-2: Withdrawal from Governor's Executive Order No. 1641 & 1223; Sale of Remnant and Right-of-Ways to County of Hawaii in Connection with Kawaiilani Street Improvements, Waiakea Homesteads, South Hilo, Hawaii, TMK: (3) 2-4-12:43, 2-4-02:por. of 01 & 128.

Item D-3: Mutual Cancellation of General Lease No. S-3001 between the County of Maui and the Maui Produce Processing Cooperative, and Authorization of Bill of Sale to the County of Maui of the Kula Vacuum Cooler Plant, Omaopio, Makawao, Maui, TMK: (2) 2-3-03:23.

Item D-10: Withdrawal from Governors Executive Order No. 570, Kalihi, Honolulu, Oahu, TMK: (1) 1-2-26:road.

Item D-13: Set Aside to the Department of Land and Natural Resources, Commission of Water Resources Management, for Monitor Well and Access and the Issuance of a Construction Right-of-Entry, Waimalu, Ewa, Oahu, TMK: (1) 9-8-11:06 por.

Unanimously approved as submitted (Johns/DeMello).

Item L-4: Approval for Cancellation of Award – Job No. B75DO71A, Waianae Boat Harbor Pier Repair and Improvements, Oahu, Hawaii.

Motion to Withdraw

Unanimously approved to withdraw (Johns/Yamamura).

Item L-1: Certification of Election and Appointment of Mauna Kea Soil and Water Conservation District Directors.

Item L-2: Appointment of Hana Soil and Water Conservation District Director.

Item L-3: Approval for Cancellation of Award – Job No. J00CB46A, Lahaina Small Boat Harbor, ADA Barrier Removal Project Maui, Hawaii.

Unanimously approved as submitted (Johns/Yamamura).

Motion to Add Item D-17.

Unanimously approved to add item D-17 (Johns/Yamamura).

Item D-17: Amend Prior Board Action of July 30 2004, Item D-12, Cancellation of Governor's Executive Order No. 3258 to the Department of Accounting and General Services for Multi-Agency complex site and Reset Aside to the County of Kauai for Adult Transition Facility, Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-8-05:01.

Unanimously approved as submitted (Agor/Inouye).

There being no further business, Chairperson Young adjourned the meeting at 10:55 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources